IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No.37 of 2002.
Reserved on: April 18, 2007.
Decided on: April 26, 2007

Chetru **…..Appellant.**

VERSUS

Shoju **…..Respondent.**

Coram

The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting?[1] No

For the Appellant: **Mr.Ajay Kumar, Advocate.**

For the Respondent: **Mr.V.D.Khidta, Advocate.**

Kuldip Singh, Judge

The defendant is in appeal against the judgment and decree dated 15.10.2001 passed by learned District Judge, Shimla in Civil Appeal No.121-S/13 of 1998 whereby the appeal filed by defendant was dismissed which was filed against the judgment and decree of the trial Court decreeing the suit of the plaintiff.

2. The brief facts of the case, as pleaded by the plaintiff, are that he was allotted 5 Bighas land in Chak Thamtari, Khasra No.1/1 min, on 1.4.1976 under the H.P. Nautor Rules. The mutation was attested in his favour on 30.11.1980 and Patta was also issued. In

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[1] ***Whether the reporters of the local papers may be allowed to see the Judgment? Yes***

recent settlement the said land was divided into six Khasra numbers, such as, 232, 235, 236, 229/1, 228/1 and 237. The defendant forcibly trespassed on land comprised in Khasra No.229/1 in the year 1987 and he also procured favourable entry in the revenue record in collusion with the Revenue officials in the column of possession as '***Villa-Sift***'. The defendant declined to vacate the suit land comprised in Khasra No.229/1, the plaintiff filed the suit on 28.10.1996 seeking possession of the suit land.

3. The defendant contested the suit and took preliminary objections of maintainability. The suit is premature, it is based on record prepared during recent settlement operation. The record has been wrongly prepared by the officials of the Settlement Department. The defendant has filed various applications for correction of entries before the Settlement Officer, the suit is liable to be dismissed. The plaintiff has no enforceable cause of action nor locus standi to file the suit. The plaint has not been properly valued for the purposes of Court fee and jurisdiction. The suit is time barred, plea of estoppal has also been taken.

4. The further case of the defendant is that Khasra No.229/1 is not part of Khasra No.1/1 but is part of old Khasra No.496/459/5 owned by him and he is in possession of the suit land though the entries have been wrongly made in the new record of rights. In the alternative, the defendant has taken the plea of adverse possession.

5. The learned District Judge vide order dated 6.12.1999 directed that record of the suit be sent back to the learned trial Court with the direction to frame a specific issue regarding alternative plea of adverse possession raised by the defendant and to return its finding on the said issue after affording reasonable opportunity to both the parties to lead evidence with respect to the said issue. The learned trial Court accordingly on 12.1.2000 framed the additional Issue No.6-A of adverse possession of defendant on the suit land vide order dated 31.10.2000 returned the findings on Issue No.6-A in negative and submitted the file to learned District Judge. The learned District Judge, as per impugned judgment and decree, dismissed the appeal and, therefore, defendant has filed the present appeal in this Court.

6. The appeal has been admitted on substantial question of law as follows:-

> "*Whether the Courts below have discarded and ignored the relevant and material evidence and have based their decision on immaterial and irrelevant evidence and have grossly misread, misinterpreted the evidence, pleadings and law as applicable to the facts of the case leading to palpably illegal and erroneous findings and if so, to what effect?*"

7. I have heard the learned counsel for the parties and have also gone through the record.

8. The learned counsel for the appellant has raised two contentions; firstly, Khasra No.229/1 has been wrongly shown in the recent settlement owned by plaintiff, in fact, this Khasra Number is part of old Khasra No.496/459/5 owned by defendant and defendant is in possession thereof and, therefore, plaintiff is not entitled to decree of possession of the suit land. Secondly, he has submitted that alternatively the defendant has become owner of the suit land on the basis of adverse possession and for this reason also the plaintiff is not entitled to decree of possession. The learned counsel for the plaintiff has supported the impugned judgment and decree and has submitted that the two Courts below have concurrently held that plantiff is owner of Khasra No.229/1 and, therefore, decree of possession has been rightly passed in favour of plaintiff. No substantial question of law is involved in the appeal which require determination by this Court.

9. The learned counsel for the defendant has submitted that plaintiff has not got the land identified whether it is part of Khasra No.229/1 or Khasra No.496/459/5 and in absence of identification of the land the two Courts below have erred in passing the decree of possession in favour of the plaintiff. The submission of the learned counsel is that in recent settlement the suit land has been wrongly shown as Khasra No.229/1. In fact, it is part of Khasra No.496/459/5,

which is owned and possessed by defendant. There is no force in this contention of the learned counsel. In Ext.DW-1/C and Ext.PW-1/B, copy of ***Misal Haquiat***, plaintiff is shown owner of Khasra No.229/1 measuring 0-10-30 Hectares and defendant in possession thereof. Thus, as per ***Misal Haquiat,*** plaintiff is owner of the suit land though defendant has been shown in possession of the suit land without any title. The plaintiff from this document has shown his right on the suit land. It was for the defendant to prove by leading such evidence as permissible in law that suit land is part of Khasra No.496/459/5 and not Khasra No.229/1, but he has miserably failed to prove that suit land is part of Khasra No.496/459/5. The two Courts below after appreciation of evidence have rightly come to the conclusion that plaintiff is owner of the suit land and defendant has no right in the suit land. The alternative submission of the learned counsel for the defendant that the defendant has become owner of the suit land by way of adverse possession has also no force. The defendant has failed to plead and prove adverse possession in accordance with law. Moreover, finding recorded by two Courts below on adverse possession is finding of fact and it does not involve any substantial question of law for determination.

10. The learned counsel has failed to point out which relevant evidence has been discarded, ignored by the Courts below. It has not been established that the view taken by two Courts below is the result

of misreading and mis-interpretation of the pleadings and evidence on record. In my view, the view taken by the learned District Judge in the impugned judgment and decree require no interference, the substantial question of law, noted above, is answered against the appellant / defendant.

11. No other point was urged.

12. In view of the above discussion, the appeal is dismissed and the impugned judgment and decree are affirmed with costs.

April 26, 2007 **(*Kuldip Singh*)**
(soni) ***Judge***